

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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Robert W. Elliott,

Plaintiff,

v.

Brian Williams, et al.,

Defendants.

Case No. 2:19-cv-00383-GMN-BNW

**Order re [28]**

Before the Court is correspondence by plaintiff Robert W. Elliott asking the Clerk of Court to issue summonses for seven defendants. ECF No. 28. Elliott is instructed that generally “an attorney or pro se party must not send case-related correspondence, such as letters, emails, or facsimiles, to the court.” LR IA 7-1(b). Instead, the Local Rules require that “[a]ll communications with the court [] be styled as a motion, stipulation, or notice.” *Id.*

The Court expects Elliott to comply with this rule going forward. For now, however, the Court will construe Elliott’s letter as a motion for issuance of summonses and to effect service of process through the U.S. Marshals Service.<sup>1</sup> For the reasons below, the motion is granted in part and denied in part.

**I. Background**

Elliott initiated this matter with a complaint under 42 U.S.C. § 1983 and an accompanying application to proceed in forma pauperis (“IFP”). ECF No. 1. The district judge screened Elliott’s complaint and found that he stated cognizable claims against defendants Brian Williams, John Borrowman, Frank Dreesen, Dana Everage, Jerry Howell, Kim Thomas, and Jo Gentry. ECF No. 7 at 9–10. Elliott accuses those defendants of violating his rights under the First Amendment of the United States Constitution. *Id.*

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<sup>1</sup> Pro se filings must “be liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Following an unsuccessful early mediation, Nevada's Office of the Attorney General accepted service on behalf of all the above-named defendants, except Gentry. ECF Nos. 16 and 25. Instead of accepting service on behalf of Gentry, the Attorney General filed Gentry's last-known address under seal at ECF No. 26.

## **II. Discussion**

When a party proceeds IFP, the Court "shall issue and serve all process." 28 U.S.C. § 1915(d); *Puett v. Blandford*, 912 F.2d 270, 273 (9th Cir. 1990) ("a party proceeding in forma pauperis is entitled to have the summons and complaint served by the U.S. Marshal.").<sup>2</sup> Here, Elliott proceeds IFP and he is therefore entitled to the Court's aid. However, all defendants except Gentry have already accepted service and appeared in this matter. ECF Nos. 25 and 29. Because these defendants have already accepted service via the Attorney General, Elliott need not effect service upon them.<sup>3</sup>

However, Gentry has neither appeared nor accepted service. Therefore, the Court will issue a summons for defendant Gentry and direct the U.S. Marshal to attempt service upon her using the last-known address under seal at ECF No. 26. The motion will be denied with regards to all defendants except Gentry.

## **III. Conclusion**

IT IS THEREFORE ORDERED that Elliott's motion (ECF No. 28) is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that the Clerk of Court shall issue a summons, under seal, for defendant Jo Gentry using the address under seal at ECF No. 26.

IT IS FURTHER ORDERED that the Clerk of Court shall send Elliott one blank copy of form USM-285.

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<sup>2</sup> Section 1915(d) dovetails with Rule 4, which provides that upon the request of a plaintiff authorized to proceed in forma pauperis, the Court "must" order "that service be made by a United States marshal or deputy or by a person specifically appointed by the court." FED. R. CIV. P. 4(c)(3).

<sup>3</sup> The appearing defendants filed a motion to dismiss, which remains pending before the district judge. ECF No. 29. Because they have already accepted service, the defendants' motion does not challenge service of process. *See id.*

1 IT IS FURTHER ORDERED that Elliott shall have twenty days in which to send the U.S.  
2 Marshals Service the required USM-285 form. The U.S. Marshals Service can be reached by mail  
3 at the following address: 333 South Las Vegas Boulevard, Suite 2058, Las Vegas, Nevada 89101.  
4 On the form, Elliott must leave blank the defendant's last-known address. The U.S. Marshals  
5 Service will acquire this addresses from the Attorney General's sealed filing at ECF No. 26.

6 IT IS FURTHER ORDERED that the Clerk of Court shall serve a copy of this order, the  
7 sealed and issued summons, and the operative complaint (ECF No. 8) on the U.S. Marshals Service.

8 IT IS FURTHER ORDERED that upon receipt of the USM-285 form, the U.S. Marshal  
9 shall, in accordance with Federal Rule of Civil Procedure 4(c)(3), attempt service on defendant Jo  
10 Gentry at her last known addresses, filed under seal at ECF No. 26.

11 IT IS SO ORDERED.

12 DATED: December 18, 2020.



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BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE